

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-84

August 20, 2002

EXCEL TELECOMMUNICATIONS, INC.
Petition for Finding of Public
Convenience and Necessity to
Provide Facilities-Based and Resold
Local Exchange Service

ORDER GRANTING AUTHORITY
TO PROVIDE FACILITIES-BASED AND
RESOLD LOCAL EXCHANGE SERVICE
AND APPROVING SCHEDULE OF
RATES AND TERMS AND CONDITIONS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

In this Order, the Commission grants Excel Networks Inc. (Excel or Company) the authority to provide resold and UNE-P facilities-based competitive local exchange service in the State of Maine. The Commission also approves the Company's Terms and Conditions and Rate Schedules. We also exempt Excel from the requirements of Chapter 210, *Uniform System of Accounts*, and of 35-A M.R.S.A. §§ 707 and 708, subject to the conditions described below.

I. APPROVAL OF APPLICATION TO SERVE

On February 13, 2002, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, Excel filed a petition with the Commission requesting authority to provide facilities-based and resold local exchange telephone service in Maine.

Before we grant approval under section 2102 for another public utility to provide service, 35-A M.R.S.A. § 2105 requires us to find that the public convenience and necessity require another utility to provide service in a location where a utility is already authorized to provide, or is providing, the same or similar service.

47 U.S.C. § 253(a), enacted by the Telecommunications Act of 1996, states:

(a) In General. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunication service.

47 U.S.C. § 253(b) states, however:

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect

the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

We find that granting Excel the authority to provide local exchange services in Maine will not impede the preservation or advancement of the public interest goals or policies stated in section 253(b).

Excel's application provides reasonable information indicating that its financial and management capabilities are adequate to provide local services in Maine.

II. SERVICE TERRITORY

A. Facilities-Based Local Service

Excel has requested authority to provide facilities-based local exchange service throughout Maine. Specifically, Excel stated that it is a UNE-P (unbundled network element platform) provider of local service and, as such, relies upon Verizon's number pool and not its own. Accordingly, Excel will have no need to request numbering resources from The North American Numbering Plan Administrator (NANPA). Further, Excel acknowledges that if its business plans change and it wishes to amend its authority to include services requiring Excel's own numbering resources, it must seek approval pursuant to 35-A M.R.S.A. § 2102, requesting the Commission to amend this Order. Any such request must specify the specific exchanges where it proposes to offer service and include information establishing a readiness to provide facilities-based local exchange service within six months in the specifically identified areas.

B. Resold Local Service

Excel has also requested authority to provided resold local exchange service throughout the state. Excel states that it will offer service as a reseller of local exchange service provided by other authorized local exchange carriers (LECs). We define local resale as the offering of local exchange service purchased from another competitive local exchange carrier (CLEC) pursuant to 47 U.S.C. § 251(b)(1) or from an incumbent local exchange carrier (ILEC) at a wholesale discount pursuant to 47 U.S.C. § 251(c)(4). The purchase of unbundled network elements from an ILEC and their use in providing local exchange service is facilities-based service and is not resale.

III. APPROVAL OF TERMS AND CONDITIONS AND RATE SCHEDULES

We allow the terms and conditions proposed by Excel to go into effect. Excel has used the Commission's standard terms and conditions that comply with Maine law and the Commission's Rules. Nevertheless, if there is any conflict between a provision in Excel's terms and conditions and the Commission's Rules or a statute, the rule or statute will

control. Included in the Terms and Conditions is a provision stating that in the event of such a conflict, the statute or the Commission's rule will control.

In general, the Commission believes that a competitive telecommunications market results in services and rates that benefit the public. We believe that the acceptability of Excel's services and rates in the market place provides an adequate test of the reasonableness of the Company's rates. Accordingly, we allow the rates proposed by Excel to go into effect.

IV. INTERCONNECTION AGREEMENT(S)

In order to provide local exchange service, a competitive local exchange carrier must, as a practical matter, obtain an interconnection agreement with the ILEC(s) providing service in any area where it intends to provide service. In the absence of such an agreement, it will not be possible for Excel's customers to call customers of the ILEC(s), and vice versa. Interconnection agreements are governed by 47 U.S.C. § 252, and must be approved by this Commission.

If a CLEC makes a bona fide request for an interconnection agreement with an ILEC that is a "rural telephone company" as defined in 47 U.S.C. § 153(37), the "rural exemption" of 47 U.S.C. § 251(f) will apply. All of Maine's independent incumbent local exchange carriers are "rural telephone companies." A rural telephone company is not required to negotiate an interconnection agreement or provide interconnection until after the Commission, pursuant to 47 U.S.C. § 251(f)(1)(B), finds that the requirement "is not unduly economically burdensome, is technically feasible, and is consistent with [the universal service provisions of] section 254 . . ."

If Excel executes an interconnect agreement(s) with an ILEC(s), it shall seek approval of that agreement by this Commission.

V. WAIVERS; REPORTING REQUIREMENTS

As a condition of providing local exchange service, Excel must comply with the terms of any applicable Commission orders or rules that may govern local interconnection and compensation for interconnection. Excel shall also comply with any applicable Commission Rules or orders that govern universal service, public safety and welfare, service quality and consumer rights.

The Commission grants Excel a waiver from the requirements of Chapter 210 of the Commission's Rules, which governs telephone utility accounting, and from 35-A M.R.S.A. §§ 707 and 708, which govern reorganizations and affiliated interests. Because Excel's rates and operations are likely to be subject to market forces, we do not see any present need to subject the Company to those requirements. However, Excel must report its annual intrastate gross operating revenues and its annual intrastate minutes for use for the purpose of determining its regulatory assessment and such other information requested by

the Commission.¹ If Excel resells service to other switched or switchless telephone service providers, the Company must maintain its records so that it may separately identify those sales.

In addition, Excel shall inform the Commission of any changes to its corporate structure and ownership and of any changes in the name under which it does business, as set forth in Ordering Paragraph No. 3. If necessary, it shall also refile its rate schedules and terms and conditions to reflect its new identity

VII. OTHER REQUIREMENTS

The Commission notes that there have been cases of alleged slamming against Excel in other jurisdictions. The Company reports that in response to the allegations they have taken steps to prevent unauthorized switching of customers. Excel shall comply with all applicable rules of the Commission and statutes of the State of Maine. Specifically, Excel shall comply with Chapter 296, the rule that prohibits telecommunications carriers from changing a customer's preferred telecommunications carrier without first receiving the customer's authorization. We put Excel on notice that the Commission has the power to initiate an investigation of any carrier should the Commission receive more than a reasonable number of complaints from consumers against that carrier. The results of the investigation could include requiring that the carrier take remedial steps to address the complaints pursuant to an agreement, or the payment of a fine or penalty, or the revocation of a carrier's certificate to provide service to customers in Maine.

VIII. ORDERING PARAGRAPHS

Accordingly, we

1. Grant, pursuant to 35-A M.R.S.A. §§ 2102 and 2105, the request of Excel to provide resold and UNE-P facilities-based competitive local exchange telephone service throughout the State of Maine;
2. Exempt Excel from the requirements of Chapter 210 of the Commission's Rules, except that it must report the revenue and minutes of use information that is requested by the Commission, on or before April 1 of each year;
3. Exempt Excel from the approval requirements of 35-A M.R.S.A. §§ 707 and 708, provided that Excel shall notify the Commission of any reorganization, as defined in 35-A M.R.S.A. § 707(1)(A), that results in a merger, sale or transfer of a controlling interest of Excel or of any entity that owns more than 50% of Excel. Excel shall also provide notice of any other changes in the name under which it does business (d/b/a), any change of the location of its business office, and any change of its contact person. Excel shall provide

¹The Commission mails the annual reporting forms to carriers in January of each year. The completed forms are due by April 1 of each year.

the Administrative Director of the Commission with notice of any of the changes described within 30 days following the change. If necessary, Excel shall amend its rate schedules and terms and conditions to reflect any change in identity.

4. Order that Excel's proposed terms and conditions and rate schedules (pages 1-26), attached to this Order, shall be effective on the date of this Order; and

5. Order that Excel shall comply with all applicable rules of the Commission, including the requirement of Chapter 280 § 10 that interexchange carriers provide notice to all affected customers of an increase to any rate that is greater than 20%.

Dated at Augusta, Maine this 20th day of August, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Nugent
Diamond

COMMISSIONER ABSENT: Welch

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.